

**Executive Summary – Enforcement Matter – Case No. 41596**

**ABF PACKING, INC.**

**RN106006125**

**Docket No. 2011-0691-WQ-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

WQ

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

ABF Packing, located at 8758 South U.S. Highway 377, Dublin, Erath County

**Type of Operation:**

Meat processing plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainants have expressed an interest in this matter but do not wish to speak at Agenda.

**Texas Register Publication Date:** February 1, 2013

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$15,550

**Amount Deferred for Expedited Settlement:** \$3,110

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$12,440

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 41596**

**ABF PACKING, INC.**

**RN106006125**

**Docket No. 2011-0691-WQ-E**

***Investigation Information***

**Complaint Date(s):** February 15, 2011, February 24, 2011, March 1, 2011 and March 2, 2011

**Complaint Information:** The complainants allege that Respondent is causing an odor when they irrigate their property.

**Date(s) of Investigation:** March 9, 2011, June 15, 2011, and July 9, 2011

**Date(s) of NOE(s):** April 15, 2011 and September 23, 2011

***Violation Information***

1. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state. Specifically, water used to wash out the enclosed trucks was being diverted from the onsite pond and was allowed to flow into a bar ditch located along U.S. Highway 377 [TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE § 321.57].
2. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state. Specifically, on January 27, 2010, investigators documented the over application of and pooling of wastewater. In addition, the runoff of irrigated wastewater discharged into a fresh water pond adjacent to the Facility [TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE § 321.57].
3. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state. Specifically, wastewater from the retention control structure ("RCS") was being discharged onto the adjoining property from a stationary reel gun [TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE § 321.57].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

By May 3, 2011, Respondent removed truck wash water from the bar ditch and constructed control berms throughout the Facility to direct any flow/runoff to the RCS.

**Technical Requirements:**

The Order will require Respondent to:

- a. Within 30 days, update operational procedures and conduct employee training to ensure irrigation practices are done in a manner that does not result in the over application of and pooling of wastewater causing unauthorized discharges;
- b. Within 45 days, submit written certification of compliance with Ordering Provision a.;
- c. Within 60 days, complete an evaluation of the effectiveness of the Facility and its operations to ensure that the Facility can maintain compliance with 30 TEX. ADMIN. CODE ch. 321 Subchapter C, Meat Processing, relating to unauthorized discharges;

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**ABF PACKING, INC.**

**RN106006125**

**Docket No. 2011-0691-WQ-E**

d. Within 90 days:

i. Submit written certification that compliance with 30 TEX. ADMIN. CODE ch. 321 Subchapter C, Meat Processing, relating to unauthorized discharges can be maintained; or

ii. If compliance with 30 TEX. ADMIN. CODE ch. 321 Subchapter C, Meat Processing can not be maintained, then submit an administratively complete permit application.

e. If a permit application is submitted, respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application with 30 days after the date of such requests or by any other deadline specified in writing; and

f. If a permit application is submitted, within 330 days, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Heather Brister, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3034; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

**TCEQ SEP Coordinator:** N/A

**Respondent:** D. L. Funderburgh, President, ABF PACKING, INC., 8758 South U.S. Highway 377, Dublin, Texas 76446

**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	20-Jun-2011	<b>Screening</b>	12-Jul-2011	<b>EPA Due</b>	
	<b>PCW</b>	25-Jul-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	ABF PACKING, INC.	
<b>Reg. Ent. Ref. No.</b>	RN106006125	
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b> Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	41596	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-0691-WQ-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Heather Brister
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$2,500**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **7.0%** Enhancement **Subtotals 2, 3, & 7** **\$175**

Notes Enhancement for one NOV with same/similar violations and one NOV with dissimilar violations.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$0**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**

Total EB Amounts \$39  
Approx. Cost of Compliance \$250  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$2,675**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** **\$2,675**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$2,675**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$535**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$2,140**

Screening Date 12-Jul-2011

Docket No. 2011-0691-WQ-E

PCW

Respondent ABF PACKING, INC.

Policy Revision 2 (September 2002)

Case ID No. 41596

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106006125

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with same/similar violations and one NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 7%

Screening Date 12-Jul-2011

Docket No. 2011-0691-WQ-E

PCW

Respondent ABF PACKING, INC.

Policy Revision 2 (September 2002)

Case ID No. 41596

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106006125

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1) and 30 Tex. Admin. Code § 321.57

Violation Description

Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, as documented during a record review conducted on June 15, 2011. Specifically, on January 27, 2010, investigators documented the over application of and pooling of wastewater. In addition, the runoff of irrigated wastewater discharged into a fresh water pond adjacent to the Facility.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 1

27 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One monthly event is recommended from the record review date (June 15, 2011) to the screening date (July 12, 2011).

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$39

Violation Final Penalty Total \$2,675

This violation Final Assessed Penalty (adjusted for limits) \$2,675

# Economic Benefit Worksheet

**Respondent** ABF PACKING, INC.  
**Case ID No.** 41596  
**Reg. Ent. Reference No.** RN106006125  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	27-Jan-2010	28-Feb-2013	3.09	\$39	n/a	\$39
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update operational procedures and conduct employee training to ensure irrigation practices are done in a manner that does not create unauthorized discharges. Date required is the date violation was first documented. Final date it is the anticipated date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

TOTAL

\$39





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b> 26-Sep-2011	<b>Screening</b> 3-Oct-2011	<b>EPA Due</b>
	<b>PCW</b> 3-Oct-2011		

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	ABF PACKING, INC.		
<b>Reg. Ent. Ref. No.</b>	RN106006125		
<b>Facility/Site Region</b>	4-Stephenville	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	41596	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-0691-WQ-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Heather Brister
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$7,500

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **7.0%** Enhancement **Subtotals 2, 3, & 7** \$525

Notes Enhancement for one NOV with same/similar violations and one NOV with dissimilar violations.

**Culpability** No **0.0%** Enhancement **Subtotal 4** \$0

Notes The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** \$0

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** \$0

Total EB Amounts \$21  
Approx. Cost of Compliance \$250  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$8,025

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** \$8,025

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$8,025

**DEFERRAL** **20.0%** Reduction **Adjustment** -\$1,605

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

**PAYABLE PENALTY** \$6,420

Screening Date 3-Oct-2011

Docket No. 2011-0691-WQ-E

PCW

Respondent ABF PACKING, INC.

Policy Revision 2 (September 2002)

Case ID No. 41596

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106006125

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with same/similar violations and one NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 7%

Screening Date 3-Oct-2011

Docket No. 2011-0691-WQ-E

PCW

Respondent ABF PACKING, INC.

Policy Revision 2 (September 2002)

Case ID No. 41596

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106006125

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1) and 30 Tex. Admin. Code § 321.57

Violation Description

Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, as documented during an investigation conducted on July 9, 2011. Specifically, wastewater from the retention control structure was being discharged onto the adjoining property from a stationary reel gun.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 3

86 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$7,500

Three monthly events are recommended from the investigation date (July 9, 2011) to the screening date (October 3, 2011).

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$21

Violation Final Penalty Total \$8,025

This violation Final Assessed Penalty (adjusted for limits) \$8,025

# Economic Benefit Worksheet

**Respondent** ABF PACKING, INC.  
**Case ID No.** 41596  
**Reg. Ent. Reference No.** RN106006125  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	9-Jul-2011	28-Feb-2013	1.64	\$21	n/a	\$21
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update operational procedures and conduct employee training to ensure irrigation practices are done in a manner that does not create unauthorized discharges. Date required is the investigation date. Final date it is the anticipated date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

TOTAL

\$21



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	18-Apr-2011	<b>Screening</b>	28-Apr-2011	<b>EPA Due</b>	
	<b>PCW</b>	1-Jul-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	ABF PACKING, INC.		
<b>Reg. Ent. Ref. No.</b>	RN106006125		
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	41596	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-0691-WQ-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Heather Brister
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$5,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** **7.0%** Enhancement **Subtotals 2, 3, & 7** \$350

Notes: Enhancement for one NOV with same/similar violations and one NOV with dissimilar violations.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** \$0

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** \$500

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** \$0

Total EB Amounts \$190  
Approx. Cost of Compliance \$18,000

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$4,850

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** \$4,850

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$4,850

**DEFERRAL** **20.0%** Reduction **Adjustment** -\$970

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

**PAYABLE PENALTY** \$3,880

Screening Date 28-Apr-2011

Docket No. 2011-0691-WQ-E

PCW

Respondent ABF PACKING, INC.

Policy Revision 2 (September 2002)

Case ID No. 41596

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106006125

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with same/similar violations and one NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 7%

Screening Date 28-Apr-2011

Docket No. 2011-0691-WQ-E

PCW

Respondent ABF PACKING, INC.

Policy Revision 2 (September 2002)

Case ID No. 41596

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106006125

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1) and 30 Tex. Admin. Code § 321.57

Violation Description

Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, as documented during an investigation conducted on March 9, 2011. Specifically, water used to wash out the enclosed trucks was being diverted from the onsite pond and was allowed to flow into a bar ditch located along United States Highway 377.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

## Violation Events

Number of Violation Events 2

50 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Two monthly events are recommended from the investigation date (March 9, 2011) to the screening date (April 28, 2011).

## Good Faith Efforts to Comply

10.0% Reduction

\$500

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes The Respondent achieved compliance on May 3, 2011.

Violation Subtotal \$4,500

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$190

Violation Final Penalty Total \$4,850

This violation Final Assessed Penalty (adjusted for limits) \$4,850

# Economic Benefit Worksheet

**Respondent** ABF PACKING, INC.  
**Case ID No.** 41596  
**Reg. Ent. Reference No.** RN106006125  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

**Item Cost**   **Date Required**   **Final Date**   **Yrs**   **Interest Saved**   **Onetime Costs**   **EB Amount**  
**Item Description** No commas or \$

## Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction	\$18,000	9-Mar-2011	3-May-2011	0.15	\$9	\$181
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)			0.00	\$0	n/a	\$0

## Notes for DELAYED costs

The cost to install berms throughout the Facility and to install a concrete trough to redirect the runoff from the Facility's parking lot to the retention control structure ("RCS"). Date required is the investigation date. Final date is the date of compliance.

## Avoided Costs

### ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0

## Notes for AVOIDED costs

Approx. Cost of Compliance

\$18,000

TOTAL

\$190



The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



## TCEQ Compliance History Report

**PUBLISHED** Compliance History Report for CN603730631, RN106006125, Rating Year 2011 which includes Compliance History (CH) components from September 1, 2006, through August 31, 2011.

**Customer, Respondent, or Owner/Operator:** CN603730631, ABF PACKING, INC.

**Classification:** AVERAGE

**Rating:** 2.67

**Regulated Entity:** RN106006125, ABF PACKING

**Classification:** AVERAGE

**Rating:** 2.67

**Complexity Points:** 0

**Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 8758 S US HIGHWAY 377 DUBLIN, TX 76446-4375, ERATH COUNTY

**TCEQ Region:** REGION 04 - DFW METROPLEX

**ID Number(s):**

**WATER QUALITY NON PERMITTED ID NUMBER**  
R04106006125

**STORMWATER PERMIT** TXR05AE10

**Compliance History Period:** September 01, 2006 to August 31, 2011

**Rating Year:** 2011

**Rating Date:** 09/01/2011

**Date Compliance History Report Prepared:** February 14, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** October 23, 2007 to October 23, 2012

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Heather Brister

**Phone:** (254) 761-3034

**Site and Owner/Operator History:**

- |  |     |
|--|-----|
| 1) Has the site been in existence and/or operation for the full five year compliance period?       | YES |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO  |
| 3) If YES for #2, who is the current owner/operator?   | N/A |
| 4) If YES for #2, who was/were the prior owner(s)/operator(s)?                                     | N/A |
| 5) If YES, when did the change(s) in owner or operator occur?                                      | N/A |

**Components (Multimedia) for the Site Are Listed in Sections A - J**

**A. Final Orders, court judgments, and consent decrees:**

N/A

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

N/A

**E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- 1      Date:      **10/26/2010** (866568)  
Self Report?   NO      Classification:      Moderate  
Citation:      TWC Chapter 26 26.121  
  
Description:      Failure to prevent an unauthorized discharge of blood waste from the facility into a ditch that was adjacent to waters of the State of Texas on August 17, 2010.
- 2      Date:      **04/05/2011** (907472)  
Self Report?   NO      Classification:      Major  
Citation:      30 TAC Chapter 281, SubChapter A 281.25(a)(4)  
Description:      Failure to obtain authorization to discharge storm water associated with industrial activities. ABF Packing, Inc. was operating a meat packing business without proper storm water authorization at 8758 S U.S. Highway 377, Dublin, TX.

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ABF PACKING, INC.  
RN106006125**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2011-0691-WQ-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding ABF PACKING, INC. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a meat processing plant located at 8758 South United States Highway 377 in Dublin, Erath County, Texas (the "Facility").
2. The Respondent has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about April 20, 2011 and on or about September 28, 2011.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Fifteen Thousand Five Hundred Fifty Dollars (\$15,550) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Twelve Thousand Four Hundred Forty Dollars (\$12,440) of the administrative penalty and Three Thousand One Hundred Ten

Dollars (\$3,110) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that by May 3, 2011, the Respondent removed truck wash water from the bar ditch and constructed control berms throughout the Facility to direct any flow/runoff to the retention control structure ("RCS").
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE § 321.57, as documented during an investigation conducted on March 9, 2011. Specifically, water used to wash out the enclosed trucks was being diverted from the onsite pond and was allowed to flow into a bar ditch located along United States Highway 377.
2. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE § 321.57, as documented during a record review conducted on June 15, 2011. Specifically, on January 27, 2010, investigators documented the over application of and pooling of wastewater. In addition, the runoff of irrigated wastewater discharged into a fresh water pond adjacent to the Facility.
3. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE

§ 321.57, as documented during an investigation conducted on July 9, 2011. Specifically, wastewater from the RCS was being discharged onto the adjoining property from a stationary reel gun.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: ABF PACKING, INC., Docket No. 2011-0691-WQ-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, update operational procedures and conduct employee training to ensure irrigation practices are done in a manner that does not result in the over application of and pooling of wastewater causing unauthorized discharges;
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a, in accordance with Ordering Provision No. 2.g below;
  - c. Within 60 days after the effective date of this Agreed Order, complete an evaluation of the effectiveness of the Facility and its operations to ensure that the Facility can maintain compliance with 30 TEX. ADMIN. CODE ch. 321 Subchapter C, Meat Processing, relating to unauthorized discharges;
  - d. Within 90 days after the effective date of this Agreed Order:
    - i. Submit written certification that compliance with 30 TEX. ADMIN. CODE ch. 321 Subchapter C, Meat Processing, relating to unauthorized discharges can be maintained, in accordance with Ordering Provision No. 2.g below; or

- ii. If compliance with 30 TEX. ADMIN. CODE ch. 321 Subchapter C, Meat Processing can not be maintained, then submit an administratively complete permit application in accordance with 30 TEX. ADMIN. CODE ch. 305 (relating to Consolidated Permits) to:

Texas Commission on Environmental Quality  
Water Quality Division  
Applications Review and Processing Team, MC 148  
P.O. Box 13087  
Austin, Texas 78711-3087

- e. If a permit application is submitted, respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application with 30 days after the date of such requests or by any other deadline specified in writing;
- f. If a permit application is submitted, within 330 days after the effective date of this Agreed Order, submit written certification of compliance that either authorization to operate has been obtained or that operation has ceased until such time that appropriate authorization is obtained, in accordance with Ordering Provision No. 2.g below; and
- g. The certifications of compliance required by Ordering Provision Nos. 2.b, 2.d.i, and 2.f, shall be notarized by a State of Texas Notary Public and include the following certification language and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph

exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

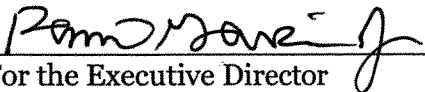
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
For the Executive Director

7/1/13  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

11-21-12  
Date

D L Funderburgh  
Name (Printed or typed)  
Authorized Representative of  
ABF PACKING, INC.

President  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.